***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 16572/2004.**

% **Date of decision: 12th May, 2010**

MAHENDER SINGH ..... Petitioner
Through: Mr. Ravindra S. Garia, Advocate.

versus

DELHI TRANSPORT CORPORATION & ANR. ..... Respondents
Through: Mr. J.S. Bhasin & Ms. Rashmi Priya, Advocates.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No

2. To be referred to the reporter or not? No

3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner was in the employment of the respondent DTC. The respondent DTC removed the petitioner from service. The petitioner raised an industrial dispute in which award dated 23rd March, 2002 was made directing the respondent DTC to reinstate the petitioner with continuity of service however without back wages. The grievance of the petitioner is that though he was reinstated but is being treated as a new appointee and has not been given the benefits of continuity of service. The respondent DTC has not filed any counter affidavit to the petition. In the circumstances, on the last date i.e. 29th April, 2010, the counsel for the respondent DTC was directed to take instructions.

2. The counsel for the respondent DTC has today informed that the counter affidavit

has been filed but since the same is not on record, it may be under objections.

3. The counsel for the respondent DTC further states that the respondent DTC has complied with the award dated 23rd March, 2002. It is further pointed out that the petitioner workman was employed on daily wages and as such on reinstatement in terms of the award he would be reinstated on daily wages only. Attention in this regard is invited to para 6 of the award dated 23rd March, 2002. He further contends that as per Annexure P-3 to the petition, being the memorandum dated 22nd October, 2002 of the respondent DTC, the petitioner workman has in implementation of the award been reinstated as a Retainer Crew Driver with continuity of service but without back wages.

4. The counsel for the petitioner workman also does not controvert that the petitioner workman was engaged by the respondent DTC on daily wages. He however states that as per the policy of the respondent DTC, the Crew is first engaged as a Retainer Crew on daily wages and thereafter, depending upon seniority and the length of engagement as Retainer Crew, brought on monthly rate and ultimately absorbed in the services of the respondent DTC. He contends that the petitioner workman, at the time of his termination which was set aside vide award dated 23rd March, 2002, was serving as a Retainer Crew on daily wages. He further draws attention to Annexure P-5 to the petition being the memorandum dated 1st June, 2004 of the respondent DTC where it is provided that the petitioner workman has been brought on monthly rate as a Driver w.e.f. 1st June, 2004. The counsel for the petitioner workman has contended that if the petitioner workman had been given continuity of service as directed in the award, as per the seniority list, he was entitled to be brought on the monthly rate much prior to 1st June, 2004 and which date would also have relevance to the date on which he would be regularized in the employment of the respondent DTC. The counsel for the respondent DTC has no instructions whether in bringing the petitioner workman on monthly rate w.e.f. 1st June, 2004, the petitioner workman has been granted continuity in service as

directed in the award or not. The contention of the petitioner workman is that he has not been so given the benefit of continuity of service as directed in the award.

5. Accordingly, this writ petition is disposed of with the direction to the respondent DTC to, within three months of today, and after giving an opportunity of hearing to the petitioner workman determine as to from which date the petitioner workman was entitled to be brought on monthly rate, if given continuity of service as directed in the award. Upon such decision being taken, the further amounts, if any, due to the petitioner workman on that account would also be paid within two months thereof.

No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

12th May, 2010
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